

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SHAUNTEZ K. ROCKEMORE,

Plaintiff,

vs.

VASQUEZ, et al.,

Defendants.

1:21-cv-01339-GSA-PC

**ORDER DISREGARDING PLAINTIFF'S
NOTICE AND ANY REQUESTS THEREIN
FILED ON AUGUST 10, 2023**

(ECF No. 25.)

I. BACKGROUND

Shauntez K. Rockemore ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. This case now proceeds with the Second Amended Complaint filed on March 8, 2023, against defendants Correctional Sergeant A. Vasquez and Correctional Officer O. Rubalcaba for use of excessive force in violation of the Eighth Amendment. (ECF No. 17.)

On August 10, 2023, Plaintiff filed a "Notice of Authenticating and Identifying Guidance . . ." ("Notice"). (ECF No. 25.)

II. PLAINTIFF'S NOTICE

Plaintiff notifies the Court that he is resubmitting the Second Amended Complaint for filing, and that he has added information and exhibits. Plaintiff indicates his intent to add a verification to the Second Amended Complaint and to authenticate its exhibits.

1 Plaintiff notes that Defendants' Answer to the complaint (ECF No. 22) is directed to the
2 **First Amended Complaint**, not the Second Amended Complaint. For this reason, Plaintiff now
3 questions whether his previously submitted Second Amended Complaint was received and filed
4 by the Court.

5 **III. DISCUSSION**

6 Defendants' Answer to the complaint, filed on July 31, 2023, has caused some confusion.
7 (ECF No. 22.) As noted by Plaintiff, Defendants state in their Answer that it is to Plaintiff's
8 **First Amended Complaint**. While Defendants properly identify the correct ECF/Document
9 number as #17, which is Plaintiff's Second Amended Complaint, they erroneously state that they
10 are answering Plaintiff's **First Amended Complaint**. Further, Defendants state that Document
11 #17 was filed on March 3, 2023, when it was actually filed on March 8, 2023. Notwithstanding
12 this confusion, the Court interprets Defendants' Answer to be to Plaintiff's Second Amended
13 Complaint which was received and filed by the Court on March 8, 2023 (ECF No. 17) and is now
14 the operative complaint for this case.

15 Thus, Plaintiff is advised that his Second Amended Complaint previously submitted on
16 March 8, 2023, was received and filed by the Court on March 8, 2023. On April 21, 2023, the
17 Court screened the Second Amended Complaint and found it appropriate for service against
18 defendants Sergeant A. Vasquez and Correctional Officer O. Rubalcaba for use of excessive
19 force in violation of the Eighth Amendment. (ECF No. 18.) On July 31, 2023, Defendants
20 Vasquez and Rubalcaba filed an Answer to the complaint. (ECF No. 22.)

21 Turning to Plaintiff's Notice filed on August 10, 2023, to the extent that Plaintiff seeks
22 to add information and exhibits to the Second Amended Complaint, he may not do so in this
23 manner. If Plaintiff seeks to amend the complaint at this stage of the proceedings, he requires
24 the opposing party's written consent or leave of court, and he must first file a motion to amend
25 the complaint, as next discussed. Fed. R. Civ. P. 15(a). Therefore, Plaintiff's Notice, the
26 resubmitted Second Amended Complaint, and all of Plaintiff's requests brought therein, filed on
27 August 10, 2023, shall be disregarded by the Court.

Leave To Amend – Rule 15(A)

“Rule 15(a) is very liberal and leave to amend ‘shall be freely given when justice so requires.’” AmerisourceBergen Corp. v. Dialysis West, Inc., 445 F.3d 1132, 1136 (9th Cir. 2006) (quoting Fed. R. Civ. P. 15(a)). However, courts “need not grant leave to amend where the amendment: (1) prejudices the opposing party; (2) is sought in bad faith; (3) produces an undue delay in the litigation; or (4) is futile.” Id. The factor of “[u]ndue delay by itself . . . is insufficient to justify denying a motion to amend.” Owens v. Kaiser Foundation Health Plan, Inc., 244 F.3d 708, 712, 713 (9th Cir. 2001) (quoting Bowles v. Reade, 198 F.3d 752, 757-58 (9th Cir. 1999)).

At this stage of the proceedings, Plaintiff may only amend the complaint with the opposing party’s written consent or leave of court. Fed. R. Civ. P. 15(a)(2). Plaintiff must first file a “motion for leave to amend,” giving Defendants an opportunity to respond. In the motion, Plaintiff must inform the court what changes he wishes to make to the Second Amended Complaint and whether he expects to add new allegations, new defendants, and/or new claims to the complaint. Also, Plaintiff must attach a copy of the proposed Third Amended Complaint to his motion for leave to amend.¹ Therefore, to amend the Second Amended Complaint, Plaintiff needs to file a **motion** and submit a **proposed Third Amended Complaint**.

Plaintiff is advised that he is not required to amend the complaint. If Plaintiff chooses not to amend the complaint, this case shall proceed with the Second Amended Complaint filed on March 8, 2023 (ECF Doc #17).

IV. CONCLUSION AND ORDER

The Court shall disregard Plaintiff’s “Notice of Authenticating and Identifying Guidance . . .” filed on August 10, 2023, the resubmitted Second Amended Complaint, and all requests therein. If Plaintiff wishes to file a Third Amended Complaint, he must follow the instructions given above.

¹ Under Local Rule 137(c), “[i]f filing a document requires leave of court, such as an amended complaint . . . , counsel shall attach the document proposed to be filed as an exhibit to moving papers seeking such leave.”

Based on the foregoing, **IT IS HEREBY ORDERED** that:

1. Plaintiff's "Notice of Authenticating and Identifying Guidance . . ." filed on August 10, 2023, together with the resubmitted Second Amended Complaint and all requests therein are DISREGARDED by the Court;

2. The Court interprets Defendants' Answer, filed on July 31, 2023, to be to Plaintiff's Second Amended Complaint filed on March 8, 2023, not to Plaintiff's First Amended Complaint; and

3. If Plaintiff seeks to file a Third Amended Complaint, he must file a motion to amend as described above and submit a proposed Third Amended Complaint for the Court's review.

IT IS SO ORDERED.

Dated: August 16, 2023

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE